IV. Amendments to the Drawings

Pending approval of the Examiner, Applicant's attorney would like to amend the drawings in the above-identified application as follows:

Figure 1, kindly add reference characters 1, 10, 30 and 32 and their associated leader lines.

Figure 3, kindly add reference characters 30 and 32 and their associated leader lines.

Attachment: Replacement Drawing Figures 1 and 3

V. Remarks

To highlight the distinction of the above referenced invention over the prior art as interpreted by the Examiner in the Office Action of January 31, 2007, Paper No. 20070125, the specification and claims were amended as set forth herein. Claims 2 and 5 were cancelled while Claims 1, 3-4, and 6-23 were amended to more clearly define the subject matter of the invention over the prior art and to place all of the claims remaining in the application in condition for allowance.

The specification was amended herein to correct matters of a grammatical and typographical nature. No new matter was presented and such amendments are deemed unobjectionable. Entry thereof is respectfully requested.

In the Office Action, the Examiner objected to the abstract of the disclosure because it had more than 150 words. The abstract has been rewritten to comply with the U.S. rules and requirements and accordingly, it is respectfully requested that the objection to the abstract of the specification be withdrawn.

The drawings were objected to as failing to comply with 37 C.F.R. § 1.84(p)(4) because reference characters "10, 11, 15, and 16" had been used to designate several elements of the container device. The specification, as well as drawing characters referenced by the Examiner were carefully reviewed and corrected to reflect that reference characters 10, 11, 15, and 16 have been used to designate only one of the elements of the container. Accordingly, submitted herewith, is a request for drawing corrections which reflect any corrections needed to be made to the drawings. The undersigned will have the drawings corrected in approved manner upon receiving the Examiner's approval of the above request corrections.

In the Office Action, the Examiner rejected Claims 1-8, 11, 14, 15, and 22 under 35 U.S.C. § 102(b) as being anticipated by Hammond et al., U.S. Patent No. 4,020,967. The undersigned attorney respectfully traverses the Examiner's rejection of independent Claim 1 and dependent Claims 3-4, 6-8, 11, 14, 15, and 22 in view of the amendments presented herein and submitted herewith, as well as the following argument.

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102 is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents, functioning in substantially the same way to produce substantially the same results. As most recently noted by the Court of Appeals of the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick*, 221 USPQ 481, 485 (1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

> "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Applicant's only amended independent Claim 1 requires:

> 1. A container comprising:
>
> a container base; and
>
> four lateral walls; each said lateral wall of said four lateral walls being hinged to said container base and collapsible inwards onto said container base;
>
> **two first opposing lateral walls** of said four lateral walls, each first lateral wall of said two first opposing lateral walls **having**
>
> **a recess located therein, said recess positioned adjacent an edge of each wall of said two first opposing lateral walls;**

a bushing type opening mounted in said first lateral wall, said bushing type opening positioned within the confines of said recess; and

a resilient pivoting lock member mounted within said recess of said first lateral wall, said resilient pivoting lock member having

a pivot pin mounted in said bushing-type opening for mounting said resilient pivoting lock member in said recess of each wall of said two first opposing lateral walls for pivotable movement relative to said first lateral wall; and

a projecting tongue latching member;

two second opposing lateral walls of said four lateral walls, each second lateral wall of said two second opposing lateral walls **having a locating lug spaced a predetermined distance from an edge of said second opposing lateral wall, said locating lug having opposing ramped surfaces thereon;**

such that each said wall of said two first opposing lateral walls are releasably lockable with a respective wall of said two second opposing later walls whereby as each wall of said two first opposing lateral walls are moved from a collapsed position adjacent said container base to an upright position, said projecting tongue latching member of said resilient pivoting lock member cooperates with one of said ramped surfaces of said locating lug mounted on each respective wall of said two second opposing lateral walls, to pivot said resilient pivoting lock member in one direction and further cooperate with a second ramp surface of said locating lug to pivot said resilient pivoting lock member in an opposite direction and snap lock into place, in an upright position, behind said locating lug at the edges of each of said two second lateral walls for purposes of locking said four assembled lateral walls.

U.S. Patent No. 4,020,967 to Hammond et al. does not have two first opposing lateral walls having a recess located therein wherein a bushing-type opening is mounted in each of the first lateral walls within the confines of each recess. Further, Hammond et al. does not have a resilient pivoting lock member having a pivot pin mounted in the bushing-type opening of

said recess for pivoting the resilient pivoting lock member with respect to the first lateral wall. Further, Hammond et al. does not have a projecting tongue latching member which is part of the resilient pivoting lock member.

Hammond et al. further does not have two second opposing lateral walls, each wall having a locating lug spaced a predetermined distance from the edge of the second opposing lateral wall wherein the locating lug has opposed ramp surfaces such that each wall of the two first opposing lateral walls are releasably lockable with a respective wall of the two second opposing lateral walls whereby as each wall of the two first opposing lateral walls are moved from a collapsed position adjacent the container base to an upright position, the projecting tongue latching member of the resilient pivoting lock member cooperates with one of the ramp surfaces of the locating lug mounted on each respective wall of said two second opposing lateral walls so as to pivot the resilient pivoting lock member in one direction and further cooperate with a second ramp surface of the locating lug to pivot the resilient pivoting locking wall member in an opposite direction and snap lock into place, in an upright position, behind the locating lug at the edges of each of the two second lateral walls for purposes of locking the four assembled lateral walls.

Therefore, in applying the test for anticipation as set forth in Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick, supra, Hammond et al. does not anticipate either independent Claim 1 or any of the dependent claims. Accordingly, withdrawal of the rejection of Claims 1, 3, 4, 6-8, 11, 14, 15, and 22 under 35 U.S.C. § 102(b) is respectfully requested.

The Examiner rejected dependent Claims 9, 10, and 13 under 35 U.S.C. § 103(a) as being unpatentable over Hammond et al. in view of Coogan, U.S. Patent No. 5,056,667. Applicant's attorney respectfully traverses each of the 35 U.S.C. § 103 rejections set forth herein in view of the claims as amended and for the reason that Applicant's invention is not an obvious improvement over the prior art. Since all of the claims rejected under 35 U.S.C. § 103 are dependent claims, each dependent claim must be read in light of the claims from which they depend.

With respect to the rejections under 35 U.S.C. §103, it is noted in MPEP Section 706 that the standard of patentability to be followed in the examination of a patent application is that which was enunciated by the Supreme Court in *Graham v. John Deere*, 148 USPQ 459 (1966), where the Court stated:

> "Under Section 103, the scope and the content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved."

Accordingly, to establish a prima facie case of obviousness, the Patent Office must: (1) set forth the differences in the claim over the applied references; (2) set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and (3) explain why the proposed modifications would be obvious. To satisfy step (3) above, the Patent Office must identify where the prior art provides a motivating suggestion, inference or implication to make the modifications proposed in step (2) above. *In re Jones*, 21 USPQ2d 1941(Fed. Cir. 1992).

The mere fact that the prior art may be modified by the Examiner does not make the modification obvious unless the prior art suggests the desirability for the modification. *In re Fritch*, 23 USPQ2d 1780 (Fed. Cir. 1992). In the present case, the Examiner has failed to make a proper prima facie showing of obviousness since the Examiner has failed to show how the prior art suggests the desirability of the proposed modification.

Hammond et al., U.S. Patent No. 4,020,967 is directed to the problem of the high cost associated with the use of collapsible containers, especially the cost associated with such container when it is returned empty.

To solve this problem, Hammond et al. teaches a novel hinge structure wherein the collapsible container of the invention consists of a floor member, an independent side, and end walls. Each of the walls if provided at its lower edge with an irregularly shaped projection, and the floor is provided, at the outer edge thereof, with a groove shaped complementary to the shape of the irregular projections on the lower ends of the walls. The projections inter-fit in the grooves so that the walls can pivotally moved between horizontal and upright positions with respect to the floor. In the upright position of the walls, the projections are interlocked in the grooves so that the walls are firmly supported on and secured to the floor. However, in the horizontal positions of the wall members, they are readily disengaged from the floor so that they can be in turn stacked on the floor for transport and return of the empty container to the point of origin.

Coogan, U.S. Patent No. 5,056,667, is directed to several problems associated with collapsible storage containers of the prior art. The first problem that Coogan is concerned with is the fact that when side panels are lifted out of a cooperating groove as taught by

Hammond et al., the weight of such side panels are extensive and would require in some cases two workers to remove these panels. Further, Coogan is directed to a further problem with known pallet containers in which panels are fastened when in their erected conditions. Many employ "loose" removable components or items such as bolts, latch nuts, latches, or clips which can be easily lost and which require the use of special tools. A still further problem identified by Coogan with the prior art containers is that prior art latch arrangement are prone to disengage easily during transport of the container and therefore, generally do not impart sufficient rigidity to the erected structure.

Accordingly, Coogan teaches an improved collapsible storage container consisting of a substantially rectangular support base having a horizontal floor, a pair of opposed end panels, one of which constitutes the front panel, the other constituting the rear panel of the container. These opposed panels are hinged about respective horizontal axis for folding inwardly relative to the base in a collapsed condition. Further, a pair of opposed side panels are hinged about respective horizontal axis for folding inwardly relative to the base into a collapsed condition. The horizontal axis being spaced at different distances from the floor so that the panels can be folded inwardly approximately flat, one on top of the other, with adjacent panels in overlying relationship. With such arrangement, Coogan teaches the use of an improved latching mechanism for releasably latching together adjacent panels at the upper corners of the container when the container is in an erected condition. The latching mechanism consists of an externally mounted spring loaded pivoted lever arm supported by one of the panels adjacent an upper corner thereof on a pivot spaced from the arm intermediate its ends and extending at right angles to the plane of the panel on which it is carried. The lever arm carrying at its upper end the latch pin

extending at right angles to the lever arm and extending in a direction parallel to the plane of the panel. The latch pin being arranged to engage through a hole or aperture formed in the end of an external latch engaging bar slideably mounted at the upper corner of an adjacent panel for sliding to and fro movement in a direction at right angle to the axis of the latch pin, the pivotable movement of the lever arm permitting the latch pin to be selectively engaged or disengaged with the latch engaging bar. The latch engaging bar when in the latch engaging position, extends through line slotted openings formed in the peripheral frame member adjacent their upper corners of the adjacent panels being latched together.

Applicant's invention is also directed to collapsible containers having snap latches such as that taught by Hammond et al. wherein one pair of lateral walls engages behind corresponding latches on the other pair of lateral walls. However, releasing the latch of this kind of collapsible container in order to convert the collapsible container from its service condition with upright lateral walls into a collapsed position with folded down lateral walls is often problematic. Depending upon the design of the collapsible container, folding the several walls upward toward the snap and catch in order to form the collapsible container is frequently difficult to accomplish. Moreover, some containers give the impression of being very unstable when assembled because the snap and catch is not sturdy. Often, the lateral walls of the prior art assembled containers are not held firmly by the snap and catches and therefore remain wobbly resulting in occasional accidents.

To solve this problem, Applicant teaches catch members configured as resiliently pivoting lock members completely mounted within the adjacent lateral wall wherein each resilient pivotal lock member is shaped as a circular sector component and mounted in two

opposing lateral walls. The resilient pivoting lock member is configured with a pivot pin provided with latches wherein the pivot pin engages a corresponding bushing-type connection in the recess of the lateral wall such that the resilient pivoting lock member can be rotated about the axis of the pivot pin to lock and unlock the sidewall. The projecting latching tongues of the resilient pivotal lock members engage behind corresponding locating lugs mounted on the second lateral walls such that when the first lateral walls are moved in an upright direction, the projecting locking tongue cooperates with ramp surfaces on the locating lugs so as to cause rotation of the resilient pivotal lock member in one direction as the projecting locating tongue moves up a ramp of the locating member while continued upright motion of the wall results in the projecting locking tongue traveling down an adjacent ramp on the locating lug member to move into a locking position between the locating lug and the edge of the lateral wall. When it is desired to move the upright wall to a horizontal position against the container base, the resilient pivoting lock member is gripped and rotated against the pretension spring to release the locking tongue from the locating lug while the wall is moved in a downward direction and collapsed inward. When the resilient pivoting lock member is thereafter released, the spring pretensioning force causes it to return to its starting or rest position, in which the locking tongues are extended. Opening and closing of the collapsible container also ensues automatically by appropriate actuation on the part of the user of the collapsible container by gripping the resilient pivoting lock member and rotate them to release the locking tongues and in turn the lateral walls can be collapsed inward onto the base. To assembly the container in its service form, it is only necessary to fold the lateral walls upward. Locking of the lateral walls to form a sturdy snap in

connection ensues automatically by the projecting locking tongue again extending to engage behind the locating lugs.

The differences between Applicant's invention and the prior art references cited by the Examiner in the rejection under 35 U.S.C. § 103 are quite clear. Although the solutions taught by each of the references is different, they are directed to problems somewhat similar to the problems described in Applicant's invention. However, the solution as taught by Applicant is completely different from that taught by either Hammond et al. singularly or in combination with the teachings of Coogan. In the first place, the teachings of Hammond et al. do not in any way obviate Applicant's invention in that Applicant's invention teaches the use of a pivotable resilient pivoting lock member which is mounted in a recess of the adjacent wall. The resilient pivoting lock member pivots about a pivot pin mounted in a bushing-type connection the lateral wall. The resilient pivoting lock member further has a projecting tongue latching member which is pre-loaded in an outward direction by a pretensioning spring member. The adjacent wall, according to the independent claim, requires a locating lug mounted to an adjacent edge of the wall member such that upon raising the lateral wall upright having the resilient pivoting lock member mounted therein the projecting tongue latching member will cooperate with opposed ramp surfaces on the locating lug to rotate the resilient pivoting lock member in a first direction as the projecting tongue latching member climbs one of the opposed ramp surfaces until such time that the projecting tongue latching member reaches the second opposing ramp surface to now pivot the resilient pivoting lock member in an opposite direction so as to move the projecting locking tongue adjacent the position behind the locating lug to lock the adjacent lateral wall sections to each other.

Even if as the Examiner suggests, the latch mechanism 43 of Coogan is combined with the collapsible container of Hammond et al., it is clear that significant additional structure must be provided in order to incorporate the latch mechanism 43 of Coogan into Hammond et al. Further, even if it is possible to incorporate this latch into the collapsible container of Hammond et al., the latch mechanism 43 must be manually operated in order to insert the pin into the hole 48 of the adjoining wall member 40. Accordingly, there is no suggestion, inference, or implication whatsoever in either of these prior art references that the latch mechanism of Coogan be combined with Hammond et al. let alone the fact that whether it is physically possible to combine without destroying the objectives of Hammond et al. Further, even if it were possible to combine these two features, the resulting structure would certainly not obviate Applicant's invention which utilizes a resiliently pivotable locking member mounted within a recess of the lateral wall which is spring loaded so as to enable the projecting tongue latching member to utilize the ramps on an adjacent locking lug mounted to an adjacent wall to lock the two walls together.

It is respectfully suggested that, but for the disclosure made by the Applicant in the application, there is no suggestion whatsoever to combine the teachings of Hammond et al. with Coogan in order to obviate Applicant's invention as taught by the claims presently amended in the application. Thus, it is only through Applicant's teachings and disclosure that one of ordinary skill in the art would appreciate the need for a resiliently pivotable lock member in combination with a recess in the wall, the resilient pivotable locking member being mounted for pivotable rotation about a bushing and pivot pin such that a projecting locking latching member cooperating with a locating lug on the adjacent wall can move the resilient pivotable locking

member in one direction to move onto a ramp of the locating lug and thereafter move down an adjoining ramp of the locating lug to securely lock the resilient pivoting locking member in place with respect to and thereby lock both the adjacent walls securely in place. In view of this, a person of ordinary skill in the art would not seek to combine the teachings of each of these references cited by the Examiner produced the result that Applicant's invention as now claimed teaches.

It is well settled patent law that the mere fact that a disclosure can some how be combined with other references does not make that combination obvious unless the prior art contains some suggestion of the desirability for combining the prior art reference. Here, the prior art contains absolutely no suggestion whatsoever for combining the references as set forth in the Examiner's rejection to teach the invention as claimed according to Applicant's disclosure. Therefore, it is respectfully suggested that the Examiner is using hindsight reconstruction in an attempt to obviate Applicant's invention after having the benefit of reading Applicant's application. Absent recognition of the problem faced by the Applicant, the prior art cannot possibly suggest, singularly or in combination, a solution as novel as Applicant's invention. Accordingly, Applicant's invention is an unobvious improvement over the prior art and not an obvious modification of any of the references cited by the Examiner. When viewed singularly or collectively, none of the prior art references teach a collapsible container as set forth in the amended claims.

In view of the foregoing remarks, the undersigned attorney respectfully submits that the amended independent claims as well as the dependent claims are clearly allowable. Therefore, Applicant's attorney respectfully requests that the Examiner's rejections under 35

U.S.C. § 103 be withdrawn from the claims as amended herein and that a formal Notice of Allowance be issued therefor.

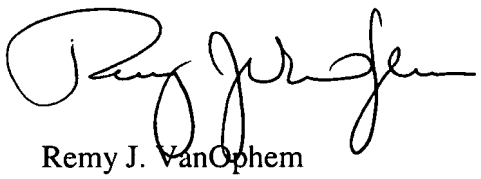
The prior art made of record but not relied on, namely Karpisek, Schrader, Figley, and Chiswell has been reviewed with interest. It is respectfully submitted that the present invention defines patentably thereover.

The Commissioner is hereby authorized to charge any deficiency in fee associated with this amendment to the undersigned's Deposit Account No. 22-0212. A duplicate of this page is included.

If the Examiner has any questions with respect to any matter now of record, Applicant's attorney may be reached at (586) 739-7445.

Respectfully submitted,

VANOPHEM & VANOPHEM, P.C.



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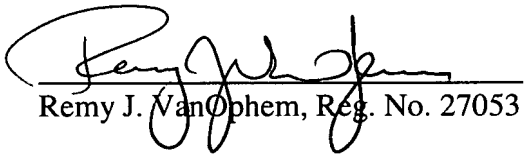

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